

**MONTVILLE TOWNSHIP
BOARD OF ZONING APPEALS
FEBRUARY 1, 2010**

PRESENT

**SALLY ALBRECHT, CHAIR
RON TANSKI, V. CHAIR
BOARD MEMBER: ALLEN BIEHL**

ALSO PRESENT

**EDWARD VIOLETT
SUSAN BALLIET
KAREN POLIAK
ASSISTANT MEDINA COUNTY
PROSECUTOR, BILL THORNE**

**JUDITH EMRICK, ZONING INSPECTOR
ROBIN HALLEEN, ZONING SECRETARY**

HANDOUTS:

- 1. FEBRUARY CALENDAR**
- 2. 2010 MEETING SCHEDULE**
- 3. CORRESPONDENCE FROM GARY HOFFMAN**
- 4. ZONING TEXT UPDATES**
- 5. EXAMPLE VARIANCE GUIDELINES FOR RIPARIAN & WETLAND SETBACKS**

AGENDA

CONDITIONAL ZONING CERTIFICATES (APPROVED REQUIRE SIGNATURE):

- 1. CONDITIONAL #6 RIDGEWOOD FALLS SUBDIVISION**
- 2. CONDITIONAL #16 SOCIETY FOR HANDICAPPED CITIZENS**

MINUTES:

- 1. DECEMBER 7, 2009**

APPLICATIONS:

- 1. CONDITIONAL RENEWAL #2 ~ EDWARD VIOLETT, 4832 PARADISE ROAD, SEVILLE, OHIO 44273**

AGENDA ITEMS:

- 2. ELECT 2010 BOARD CHAIRPERSON**
- 3. ELECT 2010 BOARD VICE CHAIRPERSON**
- 4. ADOPT 2010 BZA MEETING PROCEDURES**

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- 5. ADOPT 2010 BZA BYLAWS**
- 6. ADOPT 2010 SUNSHINE REGULATIONS**
- 7. TRAINING SESSION TEMPORARY VARIANCES**

Chairperson Albrecht called the February 1, 2010 Board of Zoning Appeals meeting to order at 7:03 p.m.

ROLL CALL:

**BOARD MEMBERS: RON TANSKI - PRESENT
ALLEN BIEHL - PRESENT
CHAIRPERSON: SALLY ABLRECHT PRESENT**

PUBLIC HEARING

Chairperson Albrecht: "If there is anyone here who wishes to speak on the subject(s) in question tonight, please sign the witness sheet if you have not already done so. Anyone who wishes to speak will be sworn in before their testimony is heard. The official minutes of the meeting are taped and therefore, it is important that the participating public state their name clearly prior to testimony. The Board of Zoning Appeals is a quasi-judicial body who bases their decisions on facts and not opinions and therefore, we ask that your testimony be based on facts and not personal opinion. The written/typed transcripts (minutes) are the official documentation of the proceedings."

Chairperson Albrecht asked if the proper notices were sent.

Zoning Inspector, Emrick stated: "Yes."

Chairperson Albrecht asked if the contiguous property owners were notified.

Zoning Inspector, Emrick stated: "Yes."

MINUTES:

1. DECEMBER 7, 2009

MOTION: Board Member Tanski Approve as written

SECOND: Board Member Biehl

**ROLL CALL: Collective Oral Vote All Board Members stated Aye ~ No
Nays**

APPLICATIONS

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1. **CONDITIONAL RENEWAL: APPLICATION #01-10-01
CONDITIONAL ZONING CERTIFICATE RENEWAL #2 EDWARD
VIOLETT, 4832 PARADISE ROAD, SEVILLE, OHIO 44273 SECTION
450.6.3 (AUTOMOTIVE SERVICE STATION; TRADE CONTRACTOR S
FACILITY, VEHICLE, EQUIPMENT AND MACHINERY REPAIR
GARAGE). (CONDITIONAL ZONING CERTIFICATE #1 EXPIRED
JANUARY 8, 2010.)**

Chairperson Albrecht introduced the first item by reading the information from Application #01-10-01 and Conditional Zoning Certificate #1,

Chairperson Albrecht read the following memo addressed to the Board of Zoning Appeals from Zoning Inspector, Emrick:

January 20, 2010

Re: Conditional Use #2 Edward Violettt 4832 Paradise Road, Seville, Ohio 44273

This is Conditional Use #2 for Mr. Violettt. While this conditional use is for automotive service station; trade contractor s facility, vehicle, equipment and machinery repair garage there does not seem to be much going on at this site. The area is clean and is in neat order. I have had no comments or complaints regarding this business.

Applicant Edward Violettt and Zoning Inspector, Emrick were sworn in.

Chairperson Albrecht asked Mr. Violettt if he had any new information to add to his application.

Applicant Edward Violettt stated he didn't have any new information to add.

Chairperson Albrecht asked the board if they had any questions for the applicant.

No Response.

Zoning Inspector, Emrick: The business is very neat and we haven't had any complaints.

Chairperson Albrecht: I didn't see any trucks on site. In the past there have been trucks visible.

Applicant Edward Violettt: It isn't a trucking business anymore.

Chairperson Albrecht: Do you still have a business there?

Applicant Edward Violettt: Yes, I am a trucking company but the only truck I use is a pick-up truck I use to deliver pharmaceutical drugs. I don't think there will ever be another trucking company there as long as I own the property.

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Chairperson Albrecht opened the hearing to the public for comments and questions.

No Response

Chairperson Albrecht closed the hearing to public participation.

MOTION: Board Member Tanski ~ I move that Conditional Zoning Certificate #2 be granted to Mr. Edward Violett, 4832 Paradise Road, Seville, Ohio 44273. Applicable Sections of Zoning Text: 450.2 (General Conditions); 450.3 (Specific Conditions); 450.6 (Supplemental Conditions); 730.9 (Mandatory Review); 730.10 (Term and Duration) Term: Three (3) years

SECOND: Board Member Biehl

ROLL CALL:

Board Member Biehl Approve
Board Member Tanski Approve
Chairperson Albrecht - Approve

Conditional Zoning Certificate Renewal #2 Passed 3-0

2. ELECT 2010 BOARD CHAIRPERSON:

MOTION: Board Member Tanski nominated Sally Albrecht

SECOND: Board Member Biehl

ROLL CALL: Collective Oral Vote: All Members Stated Aye ~ No Nays

3. ELECT 2010 BOARD VICE CHAIRPERSON:

MOTION: Board Member Biehl nominated Ron Tanski

SECOND: Board Member Albrecht

ROLL CALL: Collective Oral Vote: All Members Stated Aye ~ No Nays

4. ADOPT 2010 BZA MEETING PROCEDURES:

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MOTION: Board Member Biehl made a motion to adopt the 2010 BZA meeting procedures

SECOND: Board Member Tanski

ROLL CALL: Collective Oral Vote: All Members Stated Aye ~ No Nays

5. ADOPT 2010 BZA BYLAWS:

MOTION: Board Member Tanski made a motion to adopt the 2010 BZA meeting procedures

SECOND: Board Member Biehl

ROLL CALL: Collective Oral Vote: All Members Stated Aye ~ No Nays

6. ADOPT 2010 SUNSHINE REGULATIONS:

MOTION: Board Member Biehl made a motion to adopt the 2010 BZA meeting procedures

SECOND: Board Member Tanski

ROLL CALL: Collective Oral Vote: All Members Stated Aye ~ No Nays

UPDATE ZONING INSPECTOR, EMRICK:

1. DISCUSSION CHECKLIST FOR VARIANCES & CONDITIONAL USES:

Zoning Inspector, Emrick explained to the board that this was a tool previously used by the board and it was helpful when used to go over the required criteria for Conditional Zoning Certificates. Zoning Inspector, Emrick advised the board if they decided to use the checklist then they should make a motion to approve it.

Chairperson Albrecht stated she thought it would be a very useful tool.

MOTION: Board Member Biehl moved to approve the use of the checklist

SECOND: Board Member Albrecht

ROLL CALL: Collective Oral Vote: All Members Stated Aye ~ No Nays

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2. DISCUSSION VARIANCE GUIDELINES FOR RIPARIAN & WETLAND SETBACKS:

Zoning Inspector, Emrick: In tonight's handouts you will find an example of variance criteria pertaining to Riparian and Wetland setbacks that you will need to review as it pertains to the new Zoning Text which is also included in tonight's handouts. This example is from another Township.

3. DISCUSSION MEETING WITH ZONING COMMISSION CHAIRPERSON JOHN VUJEVICH AND BOARD MEMBER ALAN PIATAK REGARDING RIPARIAN AND WETLAND SETBACKS.

Zoning Inspector, Emrick advised the board members Zoning Commission Chairperson John Vujevich and Board Member Piatak were requesting a special meeting to discuss/review the new text regarding Riparian and Wetland Setbacks. The board discussed various dates of availability. Zoning Inspector, Emrick advised the board she would send an email to all members and the Zoning Commission to confirm the date of the meeting.

Chairperson Albrecht questioned the letter from Mr. Hoffman that was included in the handouts.

Zoning Inspector, Emrick advised the board the letter was pertaining to the recent variance that was heard by the board and that she requested information from Mr. Hoffman as to what could be done as far as their deed restrictions were concerned to maybe prevent future variances. Zoning Inspector, Emrick advised the board the letter would be placed on the March agenda for discussion.

7. TRAINING SESSION TEMPORARY VARIANCES:

At 7: 33 p.m. Assistant Medina County Prosecutor, Bill Thorne entered the meeting for a training session to discuss temporary variances.

Assistant Medina County Prosecutor Bill Thorne: I am not going to discuss any particular project that will be coming before this board. However, you may be seeing requests for temporary variances in the near future. Across the county and state there have been a lot of requests for temporary variances that are "a typical" - "a typical" in the sense that the economy is driving the need. We had three last year where the issue was that the developer couldn't get financing. No one bank is willing to finance a whole project. All of a sudden what started out as an approved project becomes a case of the developer wanting a variance so the next phase can be completed. For example, Phase III would stand alone. The developer wanted a variance because Phase III didn't have the required frontage and it had access by an easement because they need to finance with a separate bank with a separate mortgage.

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Chairperson Albrecht: Do you have a specific example?

Assistant Medina County Prosecutor Bill Thorne: The first time the situation occurred the court found that a temporary variance was valid. Conditions were placed on the variance. Once the developer complied with the conditions, the variance would disappear and the subdivision then met all the required criteria. The second time the developer said he needed a temporary variance for Phase III for 24 months. However, the economy got worse and this particular developer couldn't guarantee a deadline. When the board met their concern was that if a temporary variance was granted, what happened if the project fell through? There is no guarantee that the project would be completed as approved because bank "A" holds mortgage to Phases I and II and bank "B" holds the mortgage on Phase III. In this case a temporary variance was granted to split Phase III. However, we required deed restrictions on Phase III so the only thing that could be built was what was approved per the original plan. Phase I and II were required to have easements so utilities, roadways, etc. were connected. With required deed restrictions, in worse a case scenario, even after ten (10) years, the only thing that could be built was the original approved project. Because of the economy you will probably be seeing some of these requests coming before you. There isn't anything wrong with the zoning the variance is simply being requested because of financing. If you really tow the line, so to speak, you could reject every one. You have to decide how beneficial the project is to the Township. There is no guarantee the project will be completed as it was originally intended unless you place deed restrictions on the variance, which would mean that even if the bank forecloses, the project will be completed as it was originally approved. So far, the developers have agreed to the requests of the boards.

Board Member Biehl: Is this typically a request for subdivisions or have you also seen these requests for commercial development?

Assistant Medina County Prosecutor Bill Thorne: Typically we have seen the requests for subdivisions but you could have the same situation with commercial development.

Board Member Biehl: Doesn't the developer have to go before the Planning Commission to have a project approved and don't they plat and record the entire proposal? If the developer makes any changes, don't they have to go before the Planning Commission again?

Medina County Assistant Prosecutor Bill Thorne: No, once it is platted they don't have to go back to the Planning Commission.

Chairperson Albrecht: The developer would come before the board with a variance request.

Assistant Medina County Prosecutor Bill Thorne: The developer doesn't have to get a variance at all. In today's economy no one (1) bank is willing to finance an entire project so the project is developed in phases. The developer has the whole projected platted.

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Unless there are deed restrictions on the property, they aren't required to record any changes.

Board Member Biehl: So once it is recorded with the county they aren't required to record any alterations?

Assistant Medina County Prosecutor Bill Thorne: Correct. Generally what happens is that the project goes under and the new developer isn't intending to build by the plat and he isn't bound by it

Board Member Biehl: So the recorded plat goes with the property owner and not the property?

Assistant Medina County Prosecutor Bill Thorne: Correct

Board Member Tanski: Are you saying that it changes ownership?

Assistant Medina County Prosecutor Bill Thorne: No, it would be my fear that it changes ownership. For example, in a subdivision Phase I and II are complete. An easement is granted for Phase III because the property doesn't have the frontage, as required by the zoning text, the developer starts to build and goes under; the bank forecloses; the plat is abandoned unless there are deed restrictions on the property. What I am suggesting is the types of deed restrictions that can be placed on the temporary variance so that the property is developed the way it was originally intended/approved.

Chairperson Albrecht: What kind of deed restrictions would you suggest?

Medina County Assistant Prosecutor Bill Thorne: I suggest deed restrictions. If it is a platted Subdivision, with deed restrictions it could only be developed according to the approved plat. Since the deed restrictions run with the land, anyone who buys the land would have to follow the original approved plan. The Supreme Court upheld a temporary variance for a Subdivision in Liverpool Township.

Chairperson Albrecht: Typically what kind of variance are we looking at? It wouldn't be a use variance.

Assistant Medina County Prosecutor Bill Thorne: It would be an area variance and the finances are one of the things you want to take into consideration.

Board Member Tanski: So when we get a request for this type of variance, will we be made aware of a financial problem?

Assistant Medina County Prosecutor Bill Thorne: Yes. The developer will tell you. I am suggesting that if the project is beneficial to the Township you need to try to guarantee that the project is developed the way it was originally intended.

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Chairperson Albrecht: We need to make sure that we follow the integrity of the original plan.

Assistant Medina County Prosecutor Bill Thorne: The only way you can do that is with deed restrictions on the variance that requires the developer to meet the requirements of the original plan.

Chairperson Albrecht: How detailed can we get with the deed restrictions?

Assistant Medina County Prosecutor Bill Thorne: The board can place any restrictions on the variance that require the developer to build per the original plan.

Board Member Biehl: At what point during the process do the deed restrictions get inserted?

Assistant Medina County Prosecutor Bill Thorne: The deed restrictions should be discussed from the very beginning. Ask the developer what kind of deed restrictions can be given to guarantee that the property is going to be developed per the original plan. You will also need to look at how the previous phases were developed and what can of easements, etc. were placed on those phases.

Zoning Secretary Halleen: Using a subdivision with a conditional as an example, couldn't more restrictions be added to the conditional, rather than a temporary variance?

Assistant Medina County Assistant Prosecutor Bill Thorne: Depends, not necessarily, because it depends on how broad the conditional is. Most conditionals aren't broad enough. If the conditional is broad enough then they can come in for a conditional amendment.

Zoning Secretary Halleen: Is there a time limit on how long a temporary variance can be in effect?

Assistant Medina County Prosecutor Bill Thorne: That is why the board needs to look at worse case scenarios. It also depends on the stage of completion the development is in.

Chairperson Albrecht: If we decide to grant a temporary variance and put deed restrictions on it, is that something we file with the recorders office?

Assistant Medina County Prosecutor Bill Thorne: No, the developer would file with the recorder's office. Again, you could take a look at the Duncan Factors and decide that it doesn't meet the criteria. For example, it may not be a zoning issue it may just come down to a financial issue and you have to decide how beneficial the project will be to the Township.

Zoning Inspector, Emrick: The developer can make the request, meet with the board and then the board can table the item until they could meet with counsel.

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Assistant Medina County Prosecutor Bill Thorne: Yes. You may find it necessary to meet several times before a decision is made. You have the right to do any research you want. You will also need to know what has already been completed.

Zoning Inspector, Emrick: In most cases I give the board the background information.

Chairperson Albrecht asked for a motion for adjournment:

MOTION: Board Member Tanski moved to adjourn the meeting.

SECOND: Board Member Biehl

ROLL CALL: Collective Oral Vote: All Members Stated Aye ~ No Nays

Meeting adjourned at 8:25 p.m.

Respectfully Submitted,

Robin Halleen
Zoning Secretary

Approved:

Chairperson, Sally Albrecht

Date